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Accountability in Government

IN HIS FAMOUS Gettysburg Address, delivered in 1863 during the American Civil War, President Abraham Lincoln spoke of the importance of “government of the people, by the people, for the people.” Lincoln, like the Founding Fathers who wrote the U.S. Constitution, believed that in order for the people to rule, government must be accountable—not just through elections, but through a myriad of safeguards, some of which were built into the Constitution, many of which slowly evolved as Americans gained a greater appreciation of what their commitment to democracy involved.

In this electronic journal, we explore the ramifications of government accountability in a modern democracy. A central theme of the journal is that a written constitution assuring accountability is an insufficient guarantee—that promoting government accountability also requires a rededication of purpose by each generation as it responds to changing circum-

stances. American government, for example, is much more democratic, much more accountable than it was when the Republic was formed more than 200 years ago. How did this happen? What changes were made, and why? These are the essential questions explored in the following pages.

In our lead article, Robert S. Barker, professor of law at Duquesne University School of Law, looks at the bedrock components of accountability in the U.S. system. He discusses the separation of powers among the judiciary, legislature and executive; judicial review; and the Bill of Rights, particularly the First Amendment guaranteeing freedom of expression. Despite the good work of the Founding Fathers, Barker concludes that ensuring accountability in government, like guaranteeing liberty, “requires eternal vigilance.”

Holding government accountable, however, is difficult without essential information, without the ability to assess official conduct. That is

a key reason why government actions, in so far as is possible, should be transparent. The importance of transparency and open government is explored in an article by Robert Vaughn, professor of law at Washington College of Law, American University. He discusses the nation's freedom of information laws, which were passed relatively recently in the nation's history, "sunshine" laws requiring open government, "whistleblower" protection acts and the role of privacy protection and ethics guarantees.

No matter how principled a particular administration, or how persistent individual citizens may be in scrutinizing their government, external watchdogs have become an essential tool in overseeing government actions. Robert Schmuhl, professor of American studies and director, John W. Gallivan Program in Journalism, Ethics and Democracy, University of Notre Dame, discusses the role of various nongovernmental organizations (NGOs) in providing this important oversight role. He emphasizes the press—a diverse press—but also discusses the role of public advocacy groups such as Common Cause.

"Whistleblowers," those daring individuals who are willing to risk reputation and livelihood to expose government malfeasance, have long been a feature of the American landscape. Unfortunately, some really did pay a high price for their commitment to integrity in government—a key reason why the Whistleblower Protection Act of 1989 was passed. Thomas Devine, legal director for the Government Accountability Project (GAP), a nonprofit, nonpartisan interest group that protects the rights of employees who have "blown the whistle" on illicit government actions, discusses the legislation in an interview with Contributing Editor David Pitts. Devine

leaves no doubt of his belief that whistleblower protection legislation would be beneficial to all democracies, not just the United States.

No government, no matter how democratic or efficient, can long be effective if it is corrupt—if institutions or individuals lack integrity and are motivated by self-interest and private gain rather than the public good. Jane S. Ley, deputy director for government relations and special projects at the U.S. Office of Government Ethics, explores the vital issue of ethics in government. She discusses the legal framework that has evolved over the years to foster ethical conduct—dealing with such issues as codes of conduct, conflict of interest and financial disclosure. She concludes that the system in place, as elaborate as it now is, "will need to continue to adapt to new challenges."

One of the legacies of the Progressive Movement, a period of great social change at the beginning of the last century dedicated to making the United States more democratic, was the adoption of ballot measures by an increasing number of states. This was an experiment in direct democracy or direct accountability—enabling citizens not only to directly elect their officials, but to directly decide issues. Currently, 26 of the 50 states permit ballot measures. Contributing Editor David Pitts profiles one case in particular—a recent ballot measure in Lee County, Florida. He explains how ballot measures work in practice and discusses the pros and cons of ballot measures, particularly from a constitutional point of view.

The journal concludes with a variety of reference resources—books, articles and Internet sites—affording additional insights on the vital issue of accountability in government.

C o n t e n t s

issues of Democracy

August 2000

6

GOVERNMENT ACCOUNTABILITY AND ITS LIMITS

Robert S. Barker, professor of law at Duquesne University School of Law, looks at the key components of accountability in the U.S. system of government.

13

TRANSPARENCY — THE MECHANISMS: OPEN GOVERNMENT AND ACCOUNTABILITY

Robert G. Vaughn, professor of law at Washington College of Law, American University, discusses how the concept of transparency in government incorporates the values underlying democratic accountability.

21

GOVERNMENT ACCOUNTABILITY AND EXTERNAL WATCHDOGS

Robert Schuhl, professor of American studies and director, John W. Gullivan Program in Journalism, Ethics and Democracy, University of Notre Dame, examines past events and looks at recent developments that enable citizens as never before to monitor their government.

26

THE WHISTLEBLOWER PROTECTION ACT

Contributing Editor David Pitts talks with Thomas Devine, legal director for the Government Accountability Project (GAP), a nonprofit, nonpartisan public interest group that defends the rights of employees who “blow the whistle” on illegal or potentially harmful activities of government agencies.

32

U.S. GOVERNMENT INTEGRITY SYSTEMS AND ETHICS

Jane S. Ley, deputy director for government relations and special projects, U.S. Office of Government Ethics, discusses how the federal government regulates itself and explores the system and how it has evolved over time.

39

LEE COUNTY, FLORIDA: A CASE STUDY IN ACCOUNTABILITY

Contributing Editor David Pitts examines a case study in how ballot measures work, when citizens can hold government directly accountable for its actions.

46

BIBLIOGRAPHY

Articles and books on government accountability.

48

INTERNET SITES

Internet sites that feature government accountability themes. The opinions expressed on other Internet sites listed here do not necessarily represent the views of the U.S. government.

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The Office of International Information Programs of the U.S. Department of State provides products and services that explain U.S. policies to foreign audiences. The Office publishes five electronic journals that examine major issues facing the United States and the international community. The journals—*Economic Perspectives*, *Global Issues*, *Issues of Democracy*, *U.S. Foreign Policy Agenda* and *U.S. Society and Values*—provide analysis, commentary and background information in their thematic areas. All journal editions appear in English, French and Portuguese language versions, and selected issues also appear in Arabic, Russian and Spanish. • A new English-language issue is published every three to six weeks. Translated versions normally follow the English original by two to four weeks. The order in which the thematic editions appear is irregular, as some editions publish more issues than others. • The opinions expressed in the journals do not necessarily reflect the views or policies of the U.S. government. The U.S. Department of State assumes no responsibility for the content and continued accessibility of Internet sites linked to herein; such responsibility resides solely with the publishers of those sites. Articles may be reproduced and translated outside the United States unless the articles carry copyright restrictions. • Current or back issues of the journals can be found on the Office of International Information Programs' International Home Page on the World Wide Web at <http://usinfo.state.gov/journals/journals.htm>. They are available in several electronic formats to facilitate viewing on-line, transferring, downloading, and printing. • Comments are welcome at your local U.S. Embassy (attention Public Diplomacy Section) or at the editorial offices: Editor, *Issues of Democracy*, Democracy and Human Rights—HIP/T/DHR, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, United States of America.
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Government Accountability and Its Limits

by Robert S. Barker

In the United States, as in any democracy, the most important guarantee of government accountability is the right of citizens to control their government through elections. But elections are not the only way of holding public officials to account. Robert S. Barker, professor of law at Duquesne University School of Law, who has written and spoken widely about the subject, discusses the key components of accountability in this article on the U.S. system.

The genius of republican liberty seems to demand...not only that all power should be derived from the people, but that those entrusted with it should be kept in dependence on the people...

— James Madison, *The Federalist*, No. 37

...the concentration of power and the subjection of individuals will increase amongst democratic nations...in the same proportion as their ignorance.

— Alexis de Tocqueville,
Democracy in America, Part II, Book IV

G O V E R N M E N T A L
ACCOUNTABILITY—that is, the duty of public officials to report their actions to the citizens, and the right of the citizens to take action against those officials whose conduct the citizens consider unsatisfactory — is an essential element, perhaps *the* essential element of democracy. The purpose of this article



Robert S. Barker

is to review some aspects of governmental accountability as reflected in the constitutions, laws, history and political traditions of the United States.

The United States Constitution

The Constitution of the United States contains a number of provisions which deal directly with governmental accountability. For example, Article I, Section 5, requires that each house of Congress “keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays [that is, the votes “for” and “against”] of the members of either house on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.” The president is required, “from time to time” to give the Congress “Information of the State of the Union” and, whenever he vetoes any bill passed by Congress, he is required to state his objections

and those objections must be published in the journal of the house in which the bill originated. The Constitution also requires that “a regular Statement and Account of the Receipts and Expenditures of all public Money...be published from time to time.” The Sixth Amendment provides that the accused in a criminal case “shall enjoy the right to a...public trial.” Importantly, all civil officers of the United States are subject to removal from office for misconduct, upon impeachment by the House of Representatives and conviction by the Senate. Finally, the Constitution guarantees accountability by imposing fixed terms of office on those who exercise federal legislative and executive power. All of these guarantees promote accountability by requiring government to disclose its activities, and by providing ordinary and extraordinary means of removing public officials. The constitutions of the 50 states contain various provisions comparable to those found in the national Constitution.

Statutes and Ordinances

In addition to the aforementioned constitutional guarantees, there are many federal and state statutes and local ordinances which directly promote accountability by, for example, giving citizens the right to inspect public records, requiring public officials to disclose their sources of income, requiring candidates for public office to disclose the names of those who contribute to their campaigns, and requiring that legislative meetings be open to the public. (The term “statute” refers to a law enacted by the Congress of the United States or by the legislature of one of the states. The term “ordinance” refers to a law enacted by a city, county

or other local government.) These and other provisions promote accountability in a direct and obvious way. Such provisions are, of course, important; however, equally important are those indirect guarantees of accountability which flow from the structure of American government and the history of American politics.

Local Government

Some years ago, a newspaper reporter asked the mayor of a large American city, "Which is more important, national politics or local politics?" The mayor, quoting Thomas P. "Tip" O'Neill, the late speaker of the House of Representatives, immediately answered, "All politics is local!" He was right, and his answer identified one of the characteristics of the American political tradition which promotes governmental accountability. Ever since colonial times, the basis of citizen participation in government has been local government. Everywhere in the 13 original colonies, the settlers organized themselves into boroughs and townships, which, in turn, were grouped into counties. When the colonists established their colonial legislatures, they generally followed the practice of having each borough, township, or county elect one representative to the lower house of the legislature of that colony.

The right to vote was in those days usually severely restricted — slaves, women and those who did not own land were not permitted to vote. Many important questions were decided by the Crown rather than by the colonists, but the colonial systems of local government and legislative representation laid the foundation for ongoing accountability: local officials were known to, and dependent upon their neighbors,

and accountability was thus natural. The practice of electing legislators by single-member districts meant that each legislator was chosen by, identified with, and responsible to a particular, defined community, again ensuring a high degree of accountability.

Although each state determines for itself, through its own constitution and laws, the precise extent of governmental power enjoyed by its local governments, the role of local government has always and everywhere been very important, both legally and politically.

Separation of Powers

When the colonies declared themselves independent, the new United States of America retained the local-government foundations laid during the colonial era and built upon them a system of vertical and horizontal separations of powers which would continue to guarantee governmental accountability. In this regard, the words of Thomas Jefferson in an earlier treatise on the state of Virginia, are both descriptive and prophetic:

"The concentration of [all the powers of government] in the same hands is precisely the definition of despotic government.... The government we fought for was one not only founded on free principles but in which the powers of government should be so divided and balanced among several bodies of magistracy...that no one could transcend their legal limits without being effectively checked and restrained by the others... For this reason...the legislative, executive and judicial departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time."

In a letter to a contemporary, Samuel Kercheval, Jefferson later said:

“We should...marshal our government into (1) a general federal republic, for all concerns foreign and federal; (2) that of the State, for what relates to our own citizens exclusively; (3) the county republics, for the duties and concerns of the county; and (4) the ward republics, for the small and yet numerous and interesting concerns of the neighborhood. Thus in government, as well as in every other business of life, it is by division and subdivision of duties alone that all matters, great and small, can be managed to perfection.”

The “separation of powers” described by Jefferson has at least three dimensions: First, the allocation of governmental power among separate branches of government (this is “separation of powers” in the strict sense); second, the division of that power in such a way that the authority of one branch in a given matter is limited by the authority of another branch over the same or a related matter. (This is usually called “checks and balances.” It is, in essence, a system of intra-governmental accountability.) The third aspect of this arrangement is the vertical division of governmental power in such a way that each governmental task is assigned to the smallest, most local governmental unit able to perform it. This is the principle of subsidiarity, which of course, encompasses federalism.

All of these aspects of separation of powers are reflected in the U.S. Constitution drafted in Philadelphia in 1787. The Constitution gives to the federal (or “national”) government certain powers, such as the power to conduct foreign relations, to decide questions of war and peace, and to regulate commerce among the states and

with foreign countries. Those enumerated powers, and all powers implied therein, may be exercised by the federal government. All powers not delegated to the federal government by the Constitution are, in the words of the Constitution itself, “reserved to the states respectively, or to the people.” This division of power, made explicit by the Tenth Amendment to the Constitution, establishes the principle of federalism.

Federal governmental power is divided among three branches, legislative, executive and judicial, thus establishing “separation of powers” in the strict sense. Moreover, the exercise of power by any one of the three branches of the federal government is limited in various ways by the powers given to the other branches, thus establishing the principle of checks and balances.

This approach to separation of powers has also been carried out within each state in its own state constitution through the division of power among three branches within the state government; the creation of a variety of checks and balances among the three branches of government; and the allocation of many governmental powers to two lower levels of local government, counties and municipalities.

One of the results of these divisions of power is that in my own state, Pennsylvania, and in most others, every year is an election year; that is, during each year some municipal, county, state or federal offices are filled by election. This means that the citizen has the opportunity to go to the polls twice each year: first, in the primary election, to choose the candidates of his or her party; and, later, in the general election, to choose among the candidates of the

various parties. As a practical matter, this means that government is subject to constant scrutiny, and, thus, is subject to an ongoing process of accountability. (The best single source of information on state government is *The Book of the States*, which is published annually by the Council of State Governments, in Lexington, Kentucky.)

Judicial Review

In a very important way, governmental accountability is exercised and enforced by the tribunals through the process known as “judicial review,” which began with the landmark decision of the United States Supreme Court in 1803 in the case of *Marbury v. Madison*. In that case, President John Adams, in the closing days of his presidency, nominated one William Marbury to be justice of the peace in the District of Columbia. However, Marbury’s “commission” (that is, the document certifying his appointment) was not delivered to him, and Adam’s presidential term expired. The new president, Thomas Jefferson, ordered that the commission not be delivered.

Marbury then brought suit in the U.S. Supreme Court, seeking an order directing the Secretary of State, James Madison, to deliver the commission to him. Marbury argued that a federal statute gave the Supreme Court power to exercise original jurisdiction in cases such as his. However, the Supreme Court concluded that the Constitution limits its original jurisdiction to certain categories of suits, and that Marbury’s case was not within any of those categories. Thus, the Court said, there was a conflict between the federal statute, which purported to confer original jurisdiction, and the

Constitution, which purported to deny original jurisdiction. Because, the Court continued, the Constitution is the “supreme law of the land,” the Constitution must prevail over any other law, federal or state, which conflicts with it. Accordingly, the Court applied the Constitution, ignored the statute, and dismissed Marbury’s claim for lack of jurisdiction.

Marbury v. Madison established the principle that all laws and other governmental actions must conform to the Constitution, and that any individual who believes that his or her constitutional rights are being violated by any level of government — federal, state or local — may obtain redress through appropriate litigation. As such, every year, U.S. federal and state courts decide hundreds of cases in which government officials are required to defend the constitutionality of their actions.

Three famous decisions of the Supreme Court illustrate how this process of judicial review serves as an instrument of accountability:

In 1952, during the Korean War, the steelworkers union announced its intention to go on strike against the major steel manufacturers in the United States. A few hours before the strike was to begin, President Harry Truman issued an executive order placing the steel mills under the control of the federal government, in order to keep them operating. The steel companies immediately brought suit against the federal government, arguing that the president had exceeded his powers under the Constitution. In its decision (*Youngstown Sheet & Tube Co. v. Sawyer*), the Supreme Court, by a vote of 6-to-3, concluded that the president had indeed exceeded his constitutional powers. The government immediately returned the steel mills to

their owners, in accordance with the decision of the Court.

Perhaps the most famous exercise of judicial review in recent decades was the Supreme Court decision in the 1954 case of *Brown v. Board of Education*, in which the Court held that laws establishing racial segregation in public schools violate the constitutional guarantee of “equal protection of the laws.” The *Brown* decision, and numerous other “equal protection” decisions which followed it, have established the principle that government is accountable to all the people, not just to those who constitute the “majority” at any given moment.

In 1974, the Supreme Court was faced with a case of great constitutional importance arising out of the Watergate scandal. Two years earlier, the headquarters of the Democratic National Committee, located in a building complex known as “Watergate,” was burglarized. It soon became clear that the burglary had been organized by persons close to President Richard Nixon, and that after the burglary, a number of the president’s advisors, and probably Nixon himself, had conspired to impede the investigation of the crime. Several former members of the president’s staff were charged with crimes related to the Watergate burglary and “cover-up.” In the course of their trial, the federal criminal court ordered the president to deliver to the court certain tapes of presidential conversations which were, allegedly, relevant to the case. The president refused, arguing that he had the right to preserve the secrecy of presidential communications.

The Supreme Court, by a unanimous vote in *United States v. Nixon*, decided against the

president and ordered him to deliver the tapes to the criminal court. The Court reasoned that while the president does enjoy an “executive privilege,” which enables him to maintain the confidentiality of presidential conversations, that privilege is not absolute, but rather must in each instance be weighed against the countervailing interest in disclosure. The Court concluded that since President Nixon had not asserted any *particular* need for secrecy, his interests were outweighed by the obvious need to maintain the integrity of the criminal process. The president promptly delivered the tapes to the criminal court.

Freedom of Expression

The foregoing rules, practices and decisions ensuring governmental accountability would have been, and would now be, ineffective were it not for another set of principles deeply rooted in American history and law: freedom of speech, press, assembly, petition and association, which are guaranteed by the First Amendment to the Constitution and are often collectively referred to as “freedom of expression.” The details of these First Amendment freedoms are beyond the scope of this brief article. Nevertheless, one case in particular serves to demonstrate the close connection between freedom of expression and government accountability.

In the early 1960s, the *New York Times* published a political advertisement which made certain accusations of misconduct about a city official in the state of Alabama. The official sued the *New York Times* for defamation. At trial, it was established that the accusations

were false, and the court ordered the *Times* to pay damages to the defamed official. On appeal, the U.S. Supreme Court reversed the decision, holding that the right to criticize government is so important that even false accusations about public officials are constitutionally protected. Therefore, the Court concluded, a public official may recover damages for defamation only when the speaker (whether an individual or a newspaper) either knows that the defamatory statement is false, or acts with reckless disregard for the truth. This decision, *New York Times v. Sullivan*, established the principle that freedom of expression is most highly protected when one is criticizing the government and government officials, and, conversely, that public officials enjoy very little protection from criticism, even when that criticism is based on error.

Unless citizens can speak openly, publish and debate their ideas, and organize themselves into groups according to their own criteria and principles, they cannot possibly call public officials to account. Fortunately, the United States has a long tradition of respect for these freedoms.

The Limits of Accountability

Accountability has its limits. As the Supreme Court acknowledged in the Watergate case, the interest of the government in, for example, protecting national security or maintaining the confidentiality of diplomatic communications might, in any given situation, outweigh the reasons for disclosure. The Constitution itself, while requiring the Senate and the House of Representatives to keep and publish records of their proceedings, expressly

excepts “such Parts as may in their judgment require Secrecy.”

Further, the courts have decided that the constitutional obligation of the federal government to publish an “account of receipts and expenditures” does not require the publication of information which would compromise national security, and the constitutional guarantee of a *public* trial may in extreme cases be limited, if such limitation is necessary to ensure that the accused will receive a *fair* trial.

In the United States, as in any democracy, the most important guarantee of governmental accountability is the right of the citizens to control the direction of governmental policy and the identity of those who exercise governmental power, through the electoral process. All other constitutional and statutory provisions are but auxiliary measures. Accountable government depends ultimately on responsible citizens or, more precisely, responsible *voters*, who take public affairs seriously, inform themselves about the issues and the candidates, debate vigorously, vote regularly, and have the moral sense to distinguish right from wrong. Reporting and disclosure requirements and open-meeting laws have their place, but they are meaningless to a complacent, cynical or self-indulgent citizenry. Accountability, like liberty, requires eternal vigilance.

Transparency—the Mechanisms: Open Government and Accountability

by Robert G. Vaughn

A number of American laws assure the rights of citizens to observe, to understand and to evaluate the decisions and conduct of government officials. Access to information permits citizens to challenge government actions with which they disagree and to seek redress for official misconduct. Access to information also deters official misconduct by reminding public officials of their accountability. In this article on open government and accountability, Robert G. Vaughn, professor of law at Washington College of Law, American University, discusses how the concept of transparency incorporates these same values underlying democratic accountability, values commonly referred to in the United States by the term “open government.”

THE FOUNDERS of the United States recognized the relationship between democracy, accountability and access to government information. James Madison, later the fourth president of the United States, captured the importance of this relationship in his often quoted warning. “A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.”

Today, a number of laws assure the rights of citizens to observe, to understand and to evaluate the decisions and conduct of government officials. Access to information permits citizens to challenge government actions with which they disagree and to seek redress for official misconduct. Access to information also deters official misconduct by reminding public officials of their accountability. The concept of transparency incorporates these same values underlying democratic accountability, values



Robert G. Vaughn

commonly referred to in the United States by the term “open government.”

The best known and most effective of these open government provisions is the federal Freedom of Information Act. In addition, other open government provisions require public government proceedings and access to government documents and information. Public financial disclosure by government officials and civil servants in the executive, legislative and judicial branches of the federal government also seeks to give citizens sufficient information to judge whether the actions of those officials are likely to be influenced improperly by their own financial interests.

The open government provisions noted above often conflict with other values, particularly those of personal privacy. This conflict, however, can also be seen as the way in which access to government-held information and the protection of personal information define the information policies of democratic rather than authoritarian regimes.

The electronic revolution has affected access to information. It promises that government can become a disseminator of information vindicating the values that now support open government provisions. At the same time, it can threaten personal privacy in ways that undermine rather than support democratic institutions.

Freedom of Information Laws

Although the federal Freedom of Information Act is the best known of such provisions, all 50 states have some form of a freedom of information statute that applies to some government documents and records. A discussion of the federal statute, however, captures the most salient aspects of these state laws.

The federal Freedom of Information Act requires that some types of documents be made available without request and be placed in public reading rooms. Such documents include the rules and regulations of government departments and agencies, final opinions resolving administrative proceedings conducted by agencies, and relevant guides and manuals that directly affect members of the public. Through this requirement, Congress sought to avoid the application of “secret law” by federal officials and to guarantee that any person could examine the standards controlling the exercise of public power by those officials.

At a minimum, the rule of law requires access to the standards applied by government officials. If legal standards are to restrict official discretion, those standards must be known. Without knowledge of these standards, it is difficult to believe that they will meaningfully limit the power of public officials.

In the Administrative Procedure Act, for instance, Congress also sought to ensure that individuals and groups would know of government rules and have the opportunity to comment upon them. Agencies which propose new rules and regulations must publish them in the *Federal Register*, a periodical printed by the Government Printing Office and widely available in libraries and by subscription. In addition, agencies must publish information about their organization and procedures in order to permit the public to understand how redress may be sought within the agencies.

All other government documents and records are considered to be public and are to be made available upon request. The federal Freedom of Information Act creates the presumption that any person is entitled to government documents. Persons requesting these documents need not give any reason why they want the documents or explain what use will be made of them.

The federal Freedom of Information Act contains nine exemptions to disclosure. These are for documents: (1) properly classified in the interests of national defense or foreign policy, (2) consisting of internal guides or directives discussing enforcement strategies, the release of which would risk evasion of the law, (3) the disclosure of which is specifically prohibited by other laws, (4) containing confidential or privileged commercial or financial information, (5) protected by certain litigation privileges, (6) the release of which would constitute a clearly unwarranted invasion of personal privacy, (7) compiled for law enforcement purposes, the release of which could reasonably be expected to create the risk of certain harms, (8) contained in or related to oversight of financial

institutions by an agency charged with regulation or supervision of such institutions, and (9) containing geophysical and geological information regarding oil wells.

The courts narrowly construe these exemptions in favor of disclosure of the relevant documents. The courts review administrative decisions to withhold requested documents more rigorously than other types of administrative decisions. In most instances, the exemptions authorize but do not require an agency to withhold documents falling under one of the exemptions. (President Bill Clinton and Attorney General Janet Reno have instructed federal agencies not to claim exemptions unless they can demonstrate that disclosure of the protected documents would damage the public interest). The two principal examples of instances in which an exemption *must* be claimed are national security information, and the release of documents which would invade personal privacy.

Political accountability rests upon the right of free expression and the right of free association. These rights allow citizens to organize, to advocate and to challenge the decisions of the government representing them. These rights allow them to affect political change. In the case of political speech, the lack of information about the government policies at issue reduces the credibility of the speaker and diminishes the value of the right to speak. Without information about government decisions and the implications of these decisions, the impetus for association is also abridged.

Likewise, legal accountability, through appeal to the courts, requires information about government policies and practices. For example, documents obtained under the federal

Freedom of Information Act have fueled a number of successful challenges to the conduct of government officials, which infringed upon the civil rights of U.S. citizens.

The electronic revolution promises greater citizen access to government-held information and an enhanced role for the government as a disseminator of information through the Electronic Freedom of Information Act of 1996, which seeks to fulfill these promises. Public reading rooms are to become “virtual reading rooms” where the information available in them is accessible to anyone with a computer and a modem. Agencies are required to provide electronic access to documents regarding “hot topics,” documents which are commonly requested or likely to be of interest to other potential requesters. No longer must certain documents or records be specifically requested; they are available electronically from a federal agency. In addition, some agencies permit requests for documents and records not falling in this category to be made electronically and often the response may be electronic as well.

Most importantly, the Electronic Freedom of Information Act improves significantly the mechanisms for access by emphasizing the role of government as a disseminator of information. Many government documents and databases are available on the Internet. Increasingly, the federal executive branch has improved Internet access to federal agency websites. (For example, see <http://firstgov.gov>, an entry site that in the future, will give access to federal government websites).

Other Open Government Laws

A number of other open government laws, applicable to the federal government, also provide ways to understand and evaluate the conduct of government officials. These other provisions include the Sunshine in Government Act, the Federal Advisory Committee Act, the Ethics in Government Act, the Whistleblower Protection Act and, paradoxically, the Privacy Act. With the exception of the Federal Advisory Committee Act, most U.S. states have provisions similar to these federal laws. Indeed, the Sunshine in Government Act and the public financial disclosure provisions of the Ethics in Government Act relied upon examples found in state law.

The Sunshine in Government Act is an open meetings law, which requires that the meetings of collegial bodies, such as commissions and boards containing two or more members, be held in public. The public must be given notice of these meetings published in the *Federal Register* and transcripts or other records of the deliberations must also be made available. The law assumes, subject to exemptions somewhat similar to those contained in the Freedom of Information Act, that the deliberations of the groups of individuals responsible for these collegial bodies are subject to public scrutiny. As with the federal Freedom of Information Act, these exemptions are narrowly construed.

The justifications for open meetings are ones similar to those supporting access to government documents and records. In fact, the federal Sunshine in Government Act and similar state laws draw their names from a famous

quote by Supreme Court Justice Louis Brandeis that “sunlight is said to be the best of disinfectants.”

The federal open meeting law applies to the federal executive branch. Proceedings of the other branches also are subject to public observation. A combination of constitutional and common law provisions provide that criminal and civil trials are open to the public. Many courts have extended the principle of open trials to include public access to rulings and orders disposing of litigation and to the documents supporting those rulings. Sessions of the House and Senate are open to the public. Under relevant rules of procedure, most hearings and many committee deliberations also are open.

As the Sunshine in Government Act applies to the deliberations of collegial bodies, such as boards or commissions, the Federal Advisory Committee Act regulates advisory committees containing private citizens. These committees are advisory but used by the government in formulating official standards and procedures. A principal method of regulation is the provision for open meetings with notice published in advance in the *Federal Register*. In addition, the Federal Advisory Committee Act requires access to information regarding the membership, activities and decisions of such bodies. Because these committees can play a significant role in government policymaking, their accountability requires knowledge of their activities.

Similarly, the rationale of open government laws applies to the Whistleblower Protection Act. This act protects from retaliation federal employees who disclose information regarding official conduct that the employees reasonably

believe is a violation of law, rule or regulation, a gross waste of funds, gross mismanagement, an abuse of authority, or a specific and substantial danger to public health and safety. Like other open government laws, protection of whistleblowers helps to ensure that persons have the information necessary to make meaningful use of the rights of free expression and association, rights that are the foundations of political accountability.

Protection of whistleblowers vindicates the right of free expression. *When* information is available is as important as *whether* the information is available. Protection of whistleblowers increases both the availability of information and its timeliness. Because whistleblowers are able to disclose hidden information and to shatter coverups of misconduct, they provide information at a time when a meaningful response is possible. The right of free expression does not simply protect criticism; it also guarantees the right to use democratic procedures to change government action and policy. Whistleblower protections supplement freedom of information laws by assuring access to important information before persons would otherwise be aware of the need to request government documents and records.

The Privacy Act, despite the connotations of its title, provides access to government documents and records. A person may use the act to gain review of records concerning that person, which are retrievable by some identifying particular, such as a name or Social Security number. A person has the right to review these records and in some circumstances may seek a correction or amendment of them. The courts enforce these rights to access and amendment. Access to these records permits the individual

to evaluate whether the government has fulfilled its obligations under that act to ensure that such records are accurate, timely, relevant and complete. The act also regulates how an agency acquires, maintains, protects, uses and disseminates such records.

The Ethics in Government Act requires that members of Congress, federal judges and certain executive officials, including high-ranking civil servants, file financial information, which is made available to the public. Included in such financial reports are income from various sources including dividends, interest, rent and capital gains, which need only be reported within broad ranges of value; other forms of income, including honoraria, must be reported in more detail. Also included are receipt of gifts and the reporting of assets and liabilities. The provisions of the law are complicated and some disclosures, such as those of assets, also are made within broad ranges of value. Still, a significant amount of personal financial information is available to the public.

Congress justified these invasions of privacy on the need to reassure the public of the integrity of high government officials. Individual citizens can examine these reports to ensure that government officials do not have conflicts of interest between their duties to the public and their personal financial interests. Public disclosure of the financial interests of government officials makes a powerful statement regarding the accountability of public employees to the citizens whom they serve.

Access and Privacy

Although public financial disclosure laws starkly illustrate the conflict between access and privacy, all open government statutes confront this conflict. For example, consider the federal Freedom of Information Act. Much of the information contained in government documents is not generated by the government but rather provided to the government by third persons. In addition, information generated by the government may concern the activities or characteristics of individuals. Thus, it is likely that many government documents and records will contain substantial amounts of information implicating the personal privacy of individuals.

The Freedom of Information Act addresses the conflict between access and privacy by authorizing the withholding of documents, the release of which would constitute a clearly unwarranted invasion of personal privacy. This exemption protects privacy but strikes a balance in favor of access to materials, allowing an examination of the operations of government, since the exemption requires that disclosure must lead to a clearly unwarranted invasion of privacy. Because of the relationship between the Freedom of Information Act and the Privacy Act, most authorities believe that information falling under the privacy exemption to the Freedom of Information Act also falls under the protections of the Privacy Act. Thus, federal officials lack discretion to release documents falling under the privacy exemption.

The electronic revolution can be seen as threatening the accommodation between access and privacy. The ease of access provided by the Internet and the role of government as a disseminator of information may increase the like-

likelihood of violations of personal privacy. Some critics assert that the Electronic Freedom of Information Act reduces the legal and practical protections for privacy. The statutory resolution of the conflict between privacy and access requires a careful assessment of the scope of privacy protection and the justifications for access. Resolution, however, may be unattainable if the conflict is seen as the choice between incommensurate values.

From another perspective, access and privacy are both important to democratic accountability. The protection of personal privacy gives the individual the choice whether to speak and how to speak in different places and at different times and thus supports the right of free expression. The protection of personal privacy also nurtures the right of free association. For example, during the civil rights movement in the southern United States during the 1960s, public disclosure of the membership lists of the National Association for the Advancement of Colored People (NAACP) would have discouraged affiliation with that group and undermined the right of free association, which is one of the foundations of political accountability.

In his landmark book, *Privacy and Freedom*, Alan Westin emphasizes the relationship between access and privacy in democratic governments. Indeed, he defines democracy and authoritarianism in terms of information policy. Authoritarian governments are identified by ready government access to information about the activities of citizens and by extensive limitations on the ability of citizens to obtain information about the government. In contrast, democratic governments are marked by significant restrictions on the ability of government

to acquire information about its citizens and by ready access by citizens to information about the activities of government. Rather than being inexorably in conflict, access and privacy are both intertwined with democratic accountability.

Government Performance and Results Act (GPRA)

The Government Performance and Results Act of 1993 is a major piece of legislation designed to increase accountability in government by measuring results—the results of programs and services provided by all federal government agencies and departments. It was intended to improve program effectiveness by promoting a new focus on results, service quality and customer satisfaction.

For example, does a program provided by an agency involved in safeguarding food safety actually increase the safety of food? If so, in what ways and by how much? And what is the value of the improvement relative to the cost of the program? This is the kind of practical measurement intended by GPRA.

Under the act, agencies are mandated to develop multi-year strategic plans, annual performance plans and annual performance reports. The Government

Accounting Office (GAO) will provide assessments of all the performance plans of both Cabinet departments as well as independent agencies.

The first agency performance reports under the act were required by March 31, 2000. So it is too soon to determine how effective they have been. But it is hoped that as a result of GPRA, congressional decision-making will improve because more objective information on the relative effectiveness and efficiency of federal programs and spending will be available. That information will also be used to more effectively manage the agencies as well.

Government Accountability and External Watchdogs

by Robert Schmuhl

Outside and independent observers are critical to any society seeking accountability in government. In this essay on some American “watchdogs” —the press and NGOs—Robert Schmuhl, professor of American Studies and director, John W. Gallivan Program in Journalism, Ethics and Democracy, University of Notre Dame, examines past events and looks at recent developments that enable citizens as never before to monitor their government.

IN *DEMOCRACY IN AMERICA*, Alexis de Tocqueville’s 19th-century study, justifiably considered the most penetrating and enduring analysis of the United States ever written, the author writes: “The more I observe the main effects of a free press, the more convinced am I that, in the modern world, freedom of the press is the principal and, so to say, the constitutive element in freedom.” A few sentences later, he adds: “In America there is no limit to freedom of association for political ends.”

From his travels and acute observations, Tocqueville easily recognized the connections between “a free press” and “freedom of association for political ends.” Since the 1960s and 1970s, just as journalism became more investigatory vis-a-vis government, citizen groups and nongovernment organizations have multiplied across America to serve as watchdogs and critics of the conduct of public business and of those either elected or appointed to do that business.



Robert Schmuhl

Groups such as Common Cause, Public Citizen and the Center for Public Integrity have made public activity — or inactivity — their focus of attention and reason for being, communicating their research findings to members of their organizations and through the news media to the citizenry at large. As a result, federal, state and local governments are now subject to monitoring on a continuing basis as never before.

Public Awareness Organizations as Watchdogs

Common Cause, which was founded in 1970 and now has over 250,000 members (as well as a staff of 50 in Washington), uses the slogan “Holding Power Accountable.” Committed to open and ethical politics and governing, the organization has helped initiate legislation for reforming the funding of presidential campaigns, for creating “sunshine” laws to insure

public business is conducted in public and not behind closed doors, for ending outside gifts and lucrative speaking fees for members of Congress from special interests, and for establishing disclosure requirements for lobbyists trying to influence legislation or government agencies.

While Common Cause focuses on political and government reform, the watchdog group Public Citizen has had a more encompassing agenda. Founded by consumer activist Ralph Nader in 1971, Public Citizen focuses more on American consumer concerns — notably safe food and drugs, professional medical care and energy conservation. However, one arm of Public Citizen, “Congress Watch,” also monitors government and focuses on corporate accountability, campaign finance reform, public education, and research and media outreach. Nader and his co-workers were instrumental in the legislation creating the Occupational Safety and Health Administration (OSHA) and the Consumer Product Safety Commission.

Pursuing a somewhat different approach from other groups, the Center for Public Integrity, founded in 1990, combines the methodologies of political science and the techniques of investigative reporting in researching and releasing reports and book-length studies on such topics as questionable contributions in presidential and congressional campaigns, the dangers of under-regulated pesticides and the decline in privacy as technology becomes more sophisticated. What makes the Center for Public Integrity distinctive is its emphasis on investigative reporting and its relationship with established journalistic institutions. For instance, its analysis of campaign contributions to members of Indiana’s state general assembly

resulted in a detailed series of articles in 1996 in the *Indianapolis Star* and a week-long report on local television.

In these and other cases, an independent watchdog organization is providing sophisticated research assistance for the news media to use in their work. At a time when some news institutions claim they cannot afford expensive investigations of complicated subjects, the Center for Public Integrity helps defray the costly background inquiry, with the findings ultimately appearing in major media outlets. In the balance, news institutions and the Center achieve their common objectives, with public awareness benefitting from the joint effort.

The Press as Watchdog

Near the end of his life in 1836, James Madison wrote in a letter, “A people who mean to be their own governors must arm themselves with the power which knowledge gives.” What the fourth president and father of the U.S. Constitution could never have envisioned was a world with such an array of sources of available information that acquiring the knowledge that leads to power takes more effort today than ever before.

Although access to political and government news and reports is now relatively easy, sorting through the volume of daily information poses a serious, potentially debilitating problem for the average citizen. The media present so many messages that most people are forced to seek civic information in a deliberate, active way. With constantly multiplying broadcast, print and cyber sources, it’s no longer possible to expect people to share a common body of information about civic life.

Although media usage has by no means declined in recent years, new media options result in less attention to traditional news outlets, forcing Americans who want to be informed about public affairs to take greater personal initiative to learn what’s happening. Concerned citizens now must go to special media sources featuring political and government information for the necessary background to make decisions, for example, about voting or working to change or affect public policy. And the multiplicity of available outlets means mastering myriad data. Otherwise, one consequence could well be a sense of information overload or a personal quandary about the most appropriate direction to take.

But such work demands perspective and recognition of the limitations that exist in relying on the media alone for guidance. As the respected American columnist and author Walter Lippmann once argued, “The press is no substitute for institutions. It is like the beam of a searchlight that moves restlessly about, bringing one episode and then another out of darkness into vision. Men cannot do the work of the world by this light alone. They cannot govern society by episodes, incidents and eruptions. It is only when they work by a steady light of their own that the press, when it is turned upon them, reveals a situation intelligible enough for a popular decision.”

Maintaining “a steady light” with which to see the strengths and weaknesses of the different levels of government is the first step in responsible citizenship. From that comes individual and collective action that seeks to correct or improve aspects of politics and governance.

Especially since the 1960s and 1970s, American news coverage of government has assumed a more pronounced adversarial stance. The Vietnam War and the Watergate scandal not only lowered citizen confidence and trust in the government's work; those two events also forced the media and the public to question whether the government and its officials were truthful and thus made journalists more aggressive in their reporting of public affairs and government administrators at every level. In particular, the coverage of Watergate and Richard Nixon's administration by *Washington Post* reporters Bob Woodward and Carl Bernstein changed the ethos of journalism, giving rise to probing, investigative coverage and analysis.

What's different today, aside from the aggressive reporting style of Woodward and Bernstein, is the new environment for news, complete with many more broadcast and Internet sources. Each outlet requires a constant supply of new messages, leading to more opportunities for the news media to serve as watchdog. How well the different institutions fulfill that role is widely debated both inside and outside journalism, but the facts of the new ethos and environment are critical in understanding the contemporary relationship between government and the news media.

During the past three decades, as news outlets have proliferated and become more aggressive, government offices and agencies at every level have become more sensitive to the public's perception of their work. So many competing messages now circulate in the coverage of major stories that forming a reasoned viewpoint, based on accurate facts and fair interpretation, is increasingly difficult. As the noted ABC television journalist Ted Koppel remarked

in a recent lecture: "There are at least two kinds of extreme ignorance. For centuries we have been familiar with the first kind — an ignorance that covered most of the world like a dark cloud; an ignorance that exists in a vacuum, where no information is available. The second kind is a more recent phenomenon, one which presents itself in the form of a paradox. This second form of ignorance exists in a world of electronic anarchy, where so much information abounds that the mind doesn't know what to believe. Information does not always lead to knowledge; and knowledge is rarely enough to produce wisdom."

In this new information environment, with government officials trying to make sure their rationale for public policies and actions receives attention, tension between government on all levels and the news media is inevitable. The First Amendment to the Constitution — insuring freedom of religion, speech, press, assembly and petitioning "the Government for a redress of grievances" — is both a shield and a sword for journalists in covering public affairs.

One significant battle between the government and the press occurred in 1971, when the administration of President Richard Nixon tried to halt the publication of documents about American involvement in the Vietnam War. Called the "Pentagon Papers Case" (officially *New York Times v. U.S.*), it was the first time the federal government tried to pre-censor major news outlets — the *New York Times* and the *Washington Post* — for endangering national security.

However, by a 6–3 vote of the Supreme Court, the government's effort to restrain the press was not allowed, and publication of the

Pentagon Papers proceeded. This landmark case, decided as the Vietnam War raged on and involving the president of the United States and two leading news organizations, became an influential victory for journalism in the press-government relationship. The Supreme Court's affirmation of the First Amendment three decades ago continues to embolden the press today.

An Ever-Present Watchdog

In his second inaugural address, Thomas Jefferson noted that “the artillery of the press has been leveled against us, charged with whatsoever its licentiousness could devise or dare.” Yet earlier in his career, Jefferson had proclaimed that in choosing “government without newspapers or newspapers without government, I should not hesitate for a moment to prefer the latter.”

Embedded in Jefferson's differing views of the press are several lessons with continuing relevance for anyone attempting to understand the relationship between government and journalism or, more generally, government and outside watchdogs seeking accountability in the conduct of public affairs.

Early on, Jefferson recognized the value of newspapers for citizen self-governance and freedom, but later as president, he found the reportage and criticism detrimental to his own efforts at governing. Jefferson was neither the first nor last occupant of the White House to complain vociferously about press mistreatment of his presidency.

But Jefferson's complaints, along with those of government officials throughout the

ages, are what fuel the fires for keeping the public well informed. Suspicion of governmental power encroaching on individual freedoms has always been a defining American characteristic. Indeed, the Founding Fathers established different branches of government — executive, legislative and judicial — that proliferated at the national, state and local levels, providing “checks and balances” on public bodies and officials. Unofficially, yet significantly, the news media, public interest groups and citizens — either acting alone or collectively — monitor what's happening in government and seek changes or corrections when they seem warranted. By engaging in their day-to-day and multi-faceted activities, the work of these “watchdogs” — in holding government accountable and faithful to the nation's ideals — help keep the United States on an unending path to a more representative and purposeful democracy.

The Whistleblower Protection Act

Recently, Contributing Editor David Pitts talked with Thomas Devine, legal director for the Government Accountability Project (GAP), a nonprofit, nonpartisan public interest group that defends the rights of employees who “blow the whistle” on illegal or potentially harmful activities of government agencies. Below is the edited transcript.

MR. PITTS: What is the Whistle Blower Protection Act of 1989, and why was it passed?

MR. DEVINE: It’s a government statute that implements First Amendment free speech protection for government workers challenging betrayals of the public trust. The law protects disclosures regarding illegality, abuse of authority, gross waste, gross mismanagement or substantial and specific danger to public health or safety.

Congress passed this law as part of a unanimous, bipartisan good-government mandate. In fact, leading sponsors of the legislation explained that it more properly could have been called the “Taxpayer Protection Act.” And that helps to explain why the votes for the law were cast unanimously in 1989, and also unanimously strengthened in 1994. Congress seldom passes any significant law unanimously once, let alone twice.



Thomas Devine

MR. PITTS: How was the law strengthened in 1994?

MR. DEVINE: The 1994 amendments expanded the scope of coverage for the law and overturned hostile court precedents that had interpreted the legislation that threatened to cancel its viability.

MR. PITTS: Why was it necessary to have such a law when there is a First Amendment to the Constitution?

MR. DEVINE: The First Amendment, which is available to all citizens, is a green light for free speech matters affecting the government. Almost all constitutional rights get more detailed rules for implementation through laws passed by Congress. Constitutional rights normally are broad-brush statements of principle. We routinely rely on Congress to flesh out those principles, flesh out those values through statutes creating more tangible boundaries that citizens can rely on and practice. And that was

the point of the Whistleblower Protection Act—to apply the First Amendment where it counts most for government employees who want the freedom to act as public servants, rather than as bureaucrats limited to following orders. The law targets free speech rights for federal employees. But it also allows private citizens or government contractors to file disclosures challenging bureaucratic misconduct.

MR. PITTS: Are there any categories of federal workers that are excluded from the law?

MR. DEVINE: Yes, employees of intelligence agencies or the Federal Bureau of Investigation (FBI) are outside the protections of the Whistleblower Protection Act, as are congressional and judicial staff.

MR. PITTS: Why were those categories excluded?

MR. DEVINE: The boundaries for the law match the scope of the civil service system and the due process rules which have existed since the 1880s for federal employees with the equivalent of tenure in the career service. Employees at the judicial and legislative branches traditionally have been excluded from Civil Service Commission rules and regulations.

But in my opinion, all of those workers should be added to the scope of coverage under the Whistleblower Protection Act, because their public service duties are just as strong or even more compelling than staff at federal agencies. But that is the legal boundary at the moment.

MR. PITTS: How effective has the act been since its passage and succeeding amendment?

MR. DEVINE: The act has probably never been more effective in terms of support at the administrative level, which adjudicates administrative hearings under the law. It has demonstrated a solid commitment to the merit system principles underlying this law and has applied them in an evenhanded manner, which has earned respect from all parties.

The law also is administered by the Office of Special Counsel, which conducts informal investigations into alleged merit system violations.

Unfortunately, the law is probably facing its most severe challenge since its passage due to relentlessly hostile judicial interpretations by a court which has a monopoly of review: the Federal Circuit Court of Appeals. Congress is considering legislation to again overturn indefensible precedents by that court and to expand judicial review so that these scenarios don't recur.

MR. PITTS: Can you give us one or two high profile examples of the act's success?

MR. DEVINE: One example of helping to make a difference through the Whistleblower Protection Act was the challenge of misconduct involving disclosures of failure by the Nuclear Regulatory Commission to enforce public safety requirements at facilities under construction.

Disclosures by whistleblowers at a plant in Ohio, for example, led to cancellation of a nuclear facility that was almost completed, because nuclear safety laws had been systematically violated. After intensive investigations, sparked by an initial whistleblowing disclosure, the owners converted the plant to a coal-fired facility that now is operating safely.

Another example would be defending employees against retaliation. A police officer at a Veterans Administration medical hospital challenged sadistic, racist brutality by the local chief of police against veterans. The chief fired the whistleblower, but he asserted his rights and had his termination overturned. Eventually, the police chief lost his job and was forced to plead guilty to a series of felonies for his crimes.

So those are examples of how this law allows employees to "commit the truth" and survive. At the Government Accountability Project we say that federal workers are "committing" the truth when they blow the whistle because, so frequently, they're treated as if they had committed a crime. Those are two examples of why people take these risks and how they can be worth it.

MR. PITTS: Is the Whistleblower Protection Act the kind of legislation that could work equally well in other countries?

MR. DEVINE: Without question. Whistleblowers are the human factor that's the Achilles heel of bureaucratic corruption. And these free speech statutes are right-to-know laws not only for the public, but also for legislators and the managers of agencies responsible for keeping societies functional and defending their markets.

In a very real sense, whistleblower protection laws are the lifeblood for managers to receive early warnings of problems and have a fighting chance of limiting the damage before there's an avoidable disaster.

The Council of Europe, for example, is requiring its nations to pass whistleblower protection laws as part of their convention against corruption. And the Inter-American Convention Against Corruption requires member nations of the Organization of American States (OAS) to prepare to adapt whistleblower protection legislation as a shield for those bearing witness against corruption.

GAP was selected by OAS to help develop and advocate implementation of model whistleblower protection laws in OAS member states. And we're starting a pilot program in five Central American nations this fall for that purpose.

MR. PITTS: What is your role at GAP and what is the organization's role?

MR. DEVINE: As the legal director, I serve as our organization's expert on whistleblower rights and lead our campaigns to strengthen those laws, as well as supervise the docket of cases that we handle.

GAP has existed since 1977. We're a non-profit, nonpartisan, public interest group that defends the rights of witnesses who defend the public. We pursue our mission through counseling and representing individuals who are trying to defend themselves against retaliation, just like a normal law firm without the profit factor.

Our second role is conducting investigations to help whistleblowers make a difference by exposing coverups, seeking accountability and correcting problems exposed by those who exercise free speech rights.

The third cornerstone of our organization's work is leading efforts to create and strengthen whistleblower legislation at the federal, state and local level.

Congress has passed laws, for example, to protect employees in the nuclear and airlines industries that we have championed, among others.

The fourth leg of GAP's mission is publishing works on whistleblower rights: what employees can expect when they stick their necks out and how they can make a difference. Our publications have ranged from books to scholarly articles, such as law reviews. For example, in 1997 we published the *Whistleblower's Survival Guide: Courage Without Martyrdom*, which is a practical law guide for employees that summarizes their legal options. It comprises 20 years of lessons learned at GAP, so that others may be spared some of the pain of pioneers who worked with our organization.

Last year, we published the primary article explaining all the nooks and crannies in the Whistleblower Protection Act for the American Bar Association in their *Administrative Law Review*.

I would like to go back for just a minute to whether whistleblower protection can work and be a significant factor internationally.

There is no question nations around the world are realizing that employees who bear witness on behalf of the public are indispensable.

In the Netherlands, whistleblowers are called “bell ringers,” after those who ring church bells when danger threatens a community. In some nations they’ve been known as lighthouse keepers, whose warnings are akin to beacons exposing rocks and danger spots that could sink ships.

The common theme is that these are people, who for whatever motives, exercise free speech rights to warn the public about threats to society. And they are the pioneers of change. These are employees who challenge the conventional wisdom, whether it’s scientific, political or business. They keep any society from becoming stagnant.

And the benefits of whistleblowing in no sense are limited to any particular culture or type of political system. Information is an essential prerequisite to responsibly exercise authority, no matter what the ideology.

Our organization, true to that insight, has, in the last year, been expanding our work from domestic advocacy to international whistleblower protection. And that leads me back to answering your question about the nature of our work.

In the international arena, we also have four cornerstones of our efforts. The first is providing expert technical assistance to government or private sector leaders who are interested in planting the seed in their nations.

We’ve received requests for assistance from Argentina, Australia, Canada, Great Britain, Russia, Slovakia, South Korea, South Africa, and numerous delegations sponsored by the State Department that have visited Washington, D.C.

In a follow-up to one of those visits, we’re making presentations in Mexico this September to show government how to act on its anti-corruption mandate.

The second thing that we’re focused on is meeting with representatives of multinational organizations ranging from the World Bank to groups such as the OAS seeking a broader mandate for the principle of whistleblower rights—both outside and within those organizations.

The third initiative has been to conduct ongoing legal research and learn the full extent and nature of whistleblower rights internationally. For example, on our website we’re putting up regional globes that track the existence of whistleblower laws and new proposals.

Finally, we’re looking for test cases to develop a precedence of whistleblower protection as a human right in tribunals such as the Inter-American Commission on Human Rights and the European Court of Human Rights.

We believe that retaliation against those who challenge corruption on its face is a human rights violation. Further, traditional defenses of human rights will be strongly reinforced if there are viable protections for those who challenge violations and abuse of power.

This is the drive for accountability ranging from the integrity of markets to respect for civil society, even in countries with patterns of abuse. It is one of the most powerful phenomena that exists today.

Whistleblowers are an indispensable cornerstone for viable checks and balances to institutionalize accountability and to establish any hope of credibility for the goals of establishing civil society. Freedom of speech has

changed the course of history repeatedly in the United States. And it's one of the principles which defines a genuine democracy. This value has to be at the front lines of globalization. And to date, GAP has been very encouraged that international leaders are taking that premise as a given.

MR. PITTS: And a final question. Who is your organization funded by?

MR. DEVINE: We're primarily funded by foundation grants from a wide variety of small family foundations. We also accept attorney-fee awards after prevailing in test cases or conventional litigation. But we seldom go beyond charging for cost or a portion of the time that we spend representing whistleblowers. We have a modest direct-mail fund-raising program, also.

MR. PITTS: And if anybody overseas wanted to get in contact with you for the services and publications that you refer to, what would be the best way?

MR. DEVINE: Through our web site at www.whistleblower.org

MR. PITTS: Thank you very much, Mr. Devine.

MR. DEVINE: Thank you.

U.S. Government Integrity Systems and Ethics

by Jane S. Ley

Today, the United States government at the federal (national) level has a highly developed structure of laws and regulations designed to prevent, detect and remedy negligent conduct by government agencies and officials that is not in the public interest. The overarching purpose of this legal framework is to promote institutional integrity as well as the personal integrity of each federal employee. In this essay on how the federal government regulates itself, Jane S. Ley, deputy director for government relations and special projects, U.S. Office of Government Ethics, explores the system and how it has evolved over time.

MANY OF THE BASIC components of the legal framework supporting government integrity in the United States arose from events involving great national tension—our Revolutionary and Civil Wars, and presidential assassinations and resignations. Refinements of the basic components have historically occurred and will likely continue to occur in response to scandals and political crises.

The bedrock foundation of all U.S. government self-regulation is the U.S. Constitution. In the late 18th century, after the Revolutionary War, the drafters of the Constitution were greatly influenced by their perception that the European systems of government with which they were most familiar were corrupt. The Founders felt that concentrating too much power in the hands of any one governing body was dangerous. The United States Constitution begins with the phrase “We the People...” signifying from the very outset that the U.S. government is established by and for the people



Jane S. Ley

and must be accountable to its citizens. That is why government employees are often referred to in the United States as “public servants” and, when acting on behalf of the collective will, as “public trustees.”

The U.S. Constitution separates the federal government into three distinct branches (judicial, legislative and executive) with a system of “checks and balances” among their powers. It also allows for the retention of significant powers by the states within a federal system. While this diffusion of power may be inefficient in some ways, the Founders felt strongly that this was the best way to ensure that “We the People” would not be subjected to a single tyrannical power within the government nor would the government be dominated by a small tyrannical group of the people serving their own special interests.

Institutional Integrity

Overlaying this constitutional separation of powers are laws and regulations that impose general procedural requirements on all agencies and courts of the government to ensure that government actions are conducted in a fair and consistent manner and in the light of the public eye. This consistency and transparency of public processes is a key component of government self-regulation.

For example, during the middle half of the 20th century, Congress enacted a series of laws — including the Administrative Procedures Act and the Government in the Sunshine Act — that require agencies to follow standard procedures for administrative activities such as rule-making and enforcement of regulations and to conduct those activities in a public forum. Congress also enacted a Freedom of Information Act that allows broad public access to government records and information. Agency processes not carried out in accordance with standard written procedures or not carried out in the proper public forum may be challenged by the public in the federal courts and invalidated. In addition, all civil and criminal litigation in the federal courts must follow standardized published rules.

Finally, through a series of statutes, the government also developed a standardized, competitive, public system for issuing government contracts. And, more generally, it has standards and procedures for spending government money appropriated by the Congress. An arm of the Congress, the General Accounting Office, can audit and evaluate agency programs to help ensure that government monies are being spent and accounted for in a proper fashion.

Individual Integrity

The activities of any government, however, are carried out by individuals, thus employee qualifications and conduct also have been an evolving area of regulation. Early in U.S. history, holding a government job was based upon a so-called “spoils” system, and individual conduct in that job was not closely controlled. As each president was elected, he brought with him individuals who had supported his election and who then expected to be given government jobs. Individuals with influence in a new president’s administration would sell their ability to secure jobs for others for a percentage of their salary, and those willing to pay did so expecting to “reimburse” themselves in other ways from the public treasury. Jobs in particular demand were those that allowed the holder to collect funds from the public. Integrity or competence was not of primary importance in the selection of these employees. For example, in the 1830s Samuel Swartwout was appointed Collector of the Port of New York. During his first term, Port funds were found to be \$210,000 short, but having supported the next winning presidential candidate, Swartwout was reappointed. During that term he disappeared to Europe with over \$1,250,000 of government money. A tidy sum today, but an enormous portion of the entire federal treasury in the early 19th century.

This grossly corrupted federal service became a national scandal. Reform efforts began but were unsuccessful in raising sufficient public indignation to force a significant change. Ultimately, the assassination of President James Garfield in 1881 by an individual who felt the president owed him a specific job

was the catalyst for this reform. The public made its demand for reform during the congressional elections in 1882. In 1883, the new Congress enacted the first comprehensive civil service law — the Pendleton Act — that established an examination for fitness and competency, promotions on the basis of merit and a fair system of job and pay classification requirements for civil service. The systems administered today by the U.S. Office of Personnel Management (OPM) and the Merit Systems Protection Board are based upon that foundation and now include standard administrative procedures for addressing incompetence and misconduct. A merit-based civil service paid a fair and adequate salary is now accepted without question at the U.S. federal level as a key component in any successful program designed to protect against corruption.

Political Activities of Employees

Restrictions limiting the political activities of government employees also began to be enacted during the mid-20th century. These restrictions are popularly referred to by the name given to the first such comprehensive law, the Hatch Act. These restrictions have a two-fold purpose: to protect employees from requests from office seekers for assistance in their elections and to protect the public from having government employees use the authority and resources of their offices to help particular candidates. Initial prohibitions were quite restrictive; more recent amendments to the Hatch Act allow for some personal participation in political activities by most employees. The Hatch Act, however, continues to prohibit activities

such as using official authority or influence to interfere with an election; soliciting or accepting political contributions on behalf of a candidate; engaging in political activity while on duty, on federal premises or in a government uniform; or soliciting or discouraging the political activity of any person who has business before the employee's agency. Currently, this law is enforced by a small agency within the executive branch, the United States Office of Special Counsel (OSC), and the penalty for violating it is removal from service or, under certain circumstances, a suspension without pay for not less than 30 days.

Whistleblower Protection

The Office of Special Counsel is also responsible for the 1989 Whistleblower Protection Act, a newer component of the self-regulatory framework. The term "whistleblower" refers to a person within an organization who reveals wrongdoing to the public or to those in positions of authority. Under this law, OSC provides a secure channel through which an employee may provide evidence of a violation of any law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority or substantial and specific danger to public health and safety without fear of retaliation and without disclosure of the employee's identity, without that person's consent. OSC's authority also extends to protecting whistleblowers from retaliation because they have made these protected disclosures.

Conflicts of Interest and Ethics

The personal conflicts of interest and "ethics" of government officers and employees were for more than a century and a half dealt with almost exclusively by criminal statutes and proceedings. The offer and acceptance by public officials of bribes was an early prohibition. As particular scandals arose, additional activities became prohibited. Early scandals involved officials making unfounded claims against the government treasury or personally profiting during the Civil War from contracts for goods that never arrived or were defective (thus causing additional deaths and casualties). These scandals gave rise to a series of criminal laws designed to prohibit government officials from personally profiting by their involvement in government decisions and processes. The basic prohibitions of these statutes remain today.

In the early 1960s, renewed interest in public service as a respected profession, generated in part by the election rhetoric of President John F. Kennedy, began to shift the emphasis from simply criminal prohibitions to more aspirational standards. First, however, the federal criminal statutes were redrafted to use common terms and were codified in a single location in the laws of the United States. The Kennedy administration also began a project of establishing an administrative (non-criminal) code of conduct for executive branch officials that addressed not only actual conflicts of interest but activities that gave rise to the *appearance* of such conflicts. This new approach was based on a belief that the public's trust in the government was damaged whenever it appeared that a conflict of interest had occurred. Thus the

administrative code encompassed a far broader range of activities than that prohibited by the criminal code.

In 1965, President Lyndon Johnson, continuing the project after Kennedy's death, issued Executive Order 11222 setting forth six basic principles of conduct that were to be the bedrock of public service. That Executive Order expressly stated the previously implied principle that an employee should avoid any action that might result in, or create the appearance of (1) using public office for private gain; (2) giving preferential treatment to any organization or person; (3) impeding government efficiency or economy; (4) losing complete independence or impartiality of action; (5) making a government decision outside official channels; or (6) affecting adversely the confidence of the public in the integrity of the government.

Violations of these standards would result not in imprisonment or fine, but in administrative sanctions such as reprimand, suspension or dismissal. Thus, expectations for official conduct were set much higher, and the principles, while enforceable, also had an aspirational dimension.

In the mid 1970s, the activities associated with the impending impeachment and resignation of President Richard Nixon severely undermined the public's confidence in its leaders. In part, the congressional response was to create internal agency "watchdogs" known as inspectors general. However, there was also a recognition that the mere enforcement of laws governing institutional and employee conduct were not enough. Preventive measures were also necessary. In 1978, at the same time the Inspector General Act was passed, Congress passed the

Ethics in Government Act that created the Office of Government Ethics (OGE). Unlike many government agencies throughout the world that are tasked with dealing with conflicts of interest and ethics, OGE was not intended to be, and is not, an enforcement agency with regard to individual conduct. Rather, the office is responsible for a prevention program (public financial disclosure, counseling and education) and for establishing ethics policy for the entire executive branch. Investigation and enforcement are carried out by other agencies within the branch, such as the agency inspectors general and the Department of Justice. In this way, OGE does not perform both the roles of "counselor" and "cop."

In the legislative branch of government the Constitution makes each chamber—the Senate or the House of Representatives—responsible for determining the qualifications of its own members. Each now has a specific "ethics" committee made up of its own members and has established its own rules of conduct that supplement the criminal statutes. These committees provide advice to members of Congress, receive complaints and, if necessary, make sanction recommendations to their respective houses. Even though elected, a member of the House or Senate may be expelled by the rest of the members for misconduct.

The judicial branch has established codes of conduct for federal judges and other employees of the branch and has committees that provide advice with regard to those codes. It also has an established procedure for hearing complaints against federal judges. For serious misconduct, judges may be removed by the Senate through impeachment and conviction and

prosecuted by the Department of Justice for criminal violations. For less serious misconduct, other sanctions, such as private or public reprimand or a change in the assignment of cases, may be imposed.

Criminal Conflicts of Interest

In general, the criminal conflict of interest statutes prohibit officers and employees from all three branches from accepting bribes or gratuities, from acting as the representative of private individuals in matters before the government, and from sharing in a claim against the government. Executive branch officials are prohibited from acting in any government matter in which they, a spouse or child or certain types of organizations with which they have a fiduciary or employment relationship, has a financial interest. They also are prohibited from accepting from private sources payment or a supplementation of salary as compensation for their government services. Finally, former officers and employees of the executive and legislative branches are restricted for certain periods of time after leaving government service from representing others to or before the government on certain types of matters. The criminal statutes have a maximum penalty of a \$250,000 fine and/or five years in jail, but offenders may also be charged with civil offenses.

Financial Disclosure

High-level government officials of all three branches are required to file financial disclosure reports that are available upon request to anyone in the world. These reports are required

upon entry into federal service or when becoming a candidate for such a position, annually and at the termination of federal service. In this way, the public has an opportunity to judge for itself whether an official can be impartial, has engaged in some conflict of interest or is being truthful about his or her financial holdings and obligations. In general, these reports require the disclosure of most assets and sources of income, liabilities, gifts, fiduciary or employment positions held, continuing arrangements with former employers; purchases, sales and exchanges of certain assets; and, for first-time filers, the names of their major clients if they had been engaged in providing services for a fee prior to government employment. Mid-level government officials in the executive branch file a more limited financial disclosure report with their employing agencies that is not disclosed to the public.

Financial disclosure by federal officers and employees provides the government with one of its best prevention tools. Reviewing the reports provides the government with an opportunity to anticipate potential conflicts between the employee's financial interests and activities and his or her duties. Agencies can then counsel employees with regard to the measures they must take in order to avoid actual conflicts. Such actions can include recusal [abstaining from decisions involving possible conflict of interest], divestiture, resignation from private positions or employment or the establishment of a blind trust. Of course, the reports can also be used for enforcement purposes if information on the report discloses a violation of some statute or if the individual filer is found to have filed a false report. The U.S. financial disclosure

system, however, is not designed to detect illicit enrichment; it does not require disclosure of net worth.

Codes of Conduct

The range of activities covered by all three branches' codes of conduct can include restrictions on the acceptance and solicitation of gifts from sources outside the government as well as from other employees; employment and other activities outside the government; conflicting financial interests; partiality in performing official duties; seeking other employment; and misuse of position (i.e., using public office for private gain, misuse of nonpublic information, misuse of government property and misuse of official time). The executive branch code of conduct governs all career and political appointees in the branch. To the extent that the standards are not the same, the code is more stringent for the highest levels of employees. Penalties in the executive branch for violating these standards range from reprimand to dismissal, and when a career civil servant is involved, those sanctions must be carried out using the standard civil service administrative procedures.

Conclusion

Beginning with the Constitution itself, the United States has developed an interdependent system of laws and regulations that promote and require self-regulation. This system is designed to promote institutional integrity through the establishment of consistent, fair and public procedures for carrying out the business of govern-

ment and to promote individual employee integrity through the establishment of fair, consistent and enforceable standards of ethical conduct. It is a system that has evolved over time and must continue to adapt to new challenges, such as the changing role and scope of government itself and the effect and sometimes stress of new technologies on government processes.

Lee County, Florida— A Case Study in Accountability

by David Pitts

Lee County, a booming area on the Southwest coast of Florida, is one of many places in the U.S. where citizens may hold government directly accountable through ballot measures, specific proposals that are either voted up or down. The last ballot measure in Lee County was held on March 14, 2000 — the day of the statewide presidential primary. Contributing Editor David Pitts examines the issue that faced voters there, a case study in how ballot measures work.

JIM WOOD, A LONGTIME resident of Lee County, Florida, knew instantly how he would vote when he learned that the Board of Commissioners (the county executive) proposed a ballot measure seeking voter approval to raise the sales tax from six to seven percent for five years. He went to the polls on March 14, 2000, the day of the statewide presidential Florida primary, and voted against the proposal. More than 80 percent of those who cast ballots in Lee County that day voted the same way. The proposed sales tax increase was history. “I think most people here felt as I did,” he says. “They should raise the money, if needed, in other ways.”

Lee County is one of thousands of communities in the United States where ballot measures are commonplace. In the 26 states, including Florida, where they are permitted, voters may cast ballots on local or statewide issues directly, as well as hold elected officials to account on their overall records. Ballot measures are an example of what is known as “direct democracy” or “direct accountability.”



Jim Wood, a longtime county resident, who, along with the majority of voters, cast his ballot against the sales tax increase.

Although some political scientists and constitutional scholars question the validity of ballot measures in a representative system of government, polls indicate that more than two-thirds of voters support them.

The Stakes Involved in the Sales Tax Issue

The proposal to increase Lee County's sales tax "was an uphill battle that went downhill from the start," according to Mike Hoyem, a reporter who covered the story at the time for the *News-Press*, the dominant newspaper in the county, headquartered in its largest city, Fort Myers. The board proposed the one-cent increase to generate \$310 million dollars over five years to be split by the county and its cities for a myriad of projects, including the building of parks, roads, libraries, hurricane shelters and an expansion of the county jail, he explains. "But they didn't advocate it very strongly or very well," he adds.

Supporters of the plan called the proposed tax increase a necessary investment in the county's future and the best way to raise the needed revenue. But opponents said the financial burden should be placed squarely on developers who had driven the need for increased county services. Instead of a hike in the sales tax, its opponents favored raising impact fees on new development and the issuance of bonds to finance projects, if necessary. How to finance the costs of public infrastructure associated with private development is an issue affecting many communities in the United States and around the world. In Lee County, voters have a direct say on the issue.

"I voted for the sales tax increase because it was strategically important for this community," says Steve Tirey, president of the Chamber of Commerce of Southwest Florida. "But it wasn't just business people who voted for it. People who understood the complex arguments involved voted for it too." Although "this county has good planning, there is a need for \$200 million of new infrastructure immediately," Tirey continues. There were options other than a sales tax increase to finance it, "but none that would work as well." He predicts a hike in property taxes in the future to cover the shortfall in needed funds and says a sales tax increase would have been a fairer option since every group—property owners, renters, visitors and residents would contribute.

The Media Campaign

Both supporters and opponents of the sales tax increase took their case to the local media to express their point of view to county residents. Supporters organized a group named "The



Brian Griffin. He led the opposition to the sales tax increase.

Committee for the Cents-Able Plan for Lee's Future," to spearhead the drive for voter approval. Gail Markham, chairperson of the committee, says "I am absolutely convinced the sales tax increase was the best way to go. Impact fees on developers are being raised the maximum amount allowable by law. They won't raise enough revenue." She confirms her group raised \$200,000 from the Lee County Industrial Development Authority (IDA), a county agency, to finance the pro-tax position, which opponents claim tainted her effort.

A television advertising campaign that began six weeks before the election, was mounted. But the campaign backfired when it suggested that hiking the sales tax was a good way to raise needed revenue because it hit tourists visiting the area as well as those living in Lee County year round. Many county residents resented what they saw as an attempt to pit them against "snowbirds"—the out-of-area

visitors who are a vital part of the local economy. In 1999, almost two million tourists visited the county putting \$1.2 billion into the local economy, according to government sources.

The television ads were called "misleading scare tactics and an insult to tourists," even by some who were in favor of the tax hike, says Mike Hoyem at the *News-Press*. "They just conducted a bad campaign." Markham agrees the ad effort was less than effective. "A Washington consultant was hired to conduct the ad campaign. He insulted the community and me," she says. "The ads ran right during the time the snowbirds were here." As far as the print part of her campaign is concerned, state election officials have imposed a fine of \$400 for distributing illegal campaign literature. This follows a complaint by a private citizen, H.R. Blanchette, that campaign literature was distributed without the obligatory "paid political advertising," included.

Brian Griffin, president of the Council of Civic Associations, a network of over 100 civic and homeowner associations scattered across the county, agrees. "It was an inappropriate use of public funds for the IDA to allocate \$200,000 of public money to support the tax increase," he says. Sources in the county government deny the charge, saying the money came from private sources, not taxpayers. But Griffin says he has filed a complaint with the Florida State Department of Ethics alleging that the action by the IDA "violated the state's sunshine laws, which require that meetings where county funds are expended be open to the public and pre-publicized."

As far as expenditures by his group, which championed the anti-tax increase, are concerned, Griffin says, “We spent just \$12 on handouts. Our organization relied on nonpaid media coverage to get the word out, using techniques like ‘letters to the editor’ and media interviews.” He says his group could not afford paid ads, but they weren’t necessary anyway since the “other side’s ads alienated voters rather than convinced them.” As far as the general media coverage, particularly that of the *News-Press*, is concerned, Griffin calls it “excellent. It was more than fair.”

However, Steve Tirey at the Chamber of Commerce, says the media coverage was “unfair” to those advocating a sales tax increase. The newspaper “had a particular editorial perspective which was not in favor of the tax increase,” he notes. Its bias “was even evident in the news pages.” As far as the paid advertising is concerned, Tirey says the hard data on the election supports the conclusion “that the ads did not influence the outcome of the election one way or the other.”

The Rules for Ballot Measures

Typically, voters can have an issue placed on the ballot through a petition-drive—the collection of a specified number of signatures. Mary Pat Lenithan, assistant supervisor of elections, points out that this is the case in the rest of Florida as well. “A specific percentage of the signatures of voters in the prior election is required—five percent,” Lenithan explains. “Those in favor of a ballot measure must use small cards to collect the signatures and include the exact wording of their proposal,”

she adds. The county elections office verifies the signatures and reports the results to the Commissioners.

A ballot measure drive by the voters themselves, however, was not required in the case of the proposed sales tax increase last Spring because the board was obligated to place the issue on the ballot. In essence, the board held itself accountable. This is because in Florida, the state requires that a local-option sales tax must be submitted to the voters for approval or disapproval, explains Tirey. “In this case, the board had no option. It needed public approval for a local-option sales tax,” he explains.

The procedures for ballot measures vary from state to state, says Kurt Wenner, a tax expert with Florida Tax Watch, a private, non-profit, statewide organization devoted to safeguarding the interests of Florida taxpayers. “In Florida, the state government sets the parameters for ballot measures in the localities and the rules under which they can be held. Voters also can amend the state constitution through a referendum process,” he adds. For example, “a few years ago, Florida voters passed a statewide measure limiting local property tax increases to three percent a year throughout the state.”

Ballot measures provide “an opportunity for citizens—on tax and many other issues—to hold government directly accountable in a timely fashion,” Wenner notes. The defeat of the proposed increase in the Lee County sales tax “is an example of that—one of the most lopsided defeats of a government proposal I ever heard of.” For the record, however, Wenner says his organization has compared Florida’s state and local taxes with the other 49 states and that they are “lower than average.”



Steve Tirey, president of the Chamber of Commerce of Southwest Florida, who voted for the sales tax increase.

The History of Ballot Measures

Referenda and ballot measures to hold government directly accountable go back to the earliest years of the Republic and especially to the first two decades of the last century, the heyday of the Progressive Movement, which was dedicated to making the U.S. more democratic. Although the rules for holding them vary from state to state, Florida officials, as well as their counterparts elsewhere, take elaborate precautions to make sure they are transparent and precise. This is necessary, in part, because all ballot measures—indeed all legislation—in the U.S. is subject to judicial review.

American political scientists make a distinction between a ballot measure, which allows voters to cast ballots on specific proposals, and a referendum, whereby state legislatures refer a proposed or existing law to the voters for their approval or rejection, says Thomas Cronin,

author of *Direct Democracy*. Such direct democracy practices require an informed electorate and access to the media for all sides of an issue, he adds.

In the case of Lee County, as in most jurisdictions in the United States, access to the media is not a problem. Not only does the First Amendment guarantee freedom of the press, but there also is a strong American tradition of local media, both broadcast and print. In Lee County, local affiliates of the major broadcast networks reach all the county's residents, as does the dominant newspaper there, the *News-Press*. All the local media carried extensive coverage of the sales tax issue. Local television stations also aired the controversial ads, which were paid for by supporters of the sales tax increase.

The Pros and Cons of Ballot Measures

Supporters of ballot measures regard them “as a useful check on ill-considered or dangerous actions by the legislature or executive and as an expression of direct democracy,” say Jack Plano and Milton Greenburg, authors of *The American Political Dictionary*. Those who oppose them “regard them as an unnecessary check on representative government that weakens legislative responsibility,” they add.

Opinions about ballot measures also differ among constitutional scholars. American democracy stresses the separation of powers among executive, legislative and judiciary. Direct accountability is somewhat at odds with the tradition of representative government in the United States established by the Founding Fathers. That is one reason why they are confined to state and local government and why



Gail Markham. She led the fight to pass the sales tax increase.

political scientists stress that ballot measures should not be a substitute for action by lawmakers, but a supplement in limited circumstances.

Even so, as ballot measures have mushroomed in number over the last 20 years, so has opposition to them by a number of prominent academics and journalists. The most influential recent indictment of ballot measures is contained in a book by veteran *Washington Post* journalist David Broder. He calls ballot measures “alien to the spirit of the Constitution and its careful system of checks and balances.”

In Lee County, however, most residents have no such reservations about ballot measures. Everyone asked liked them. In the case of the ballot measure proposing a sales tax increase, not only did opponents support this direct democracy tool, so did the supporters who lost so overwhelmingly. Ballot measures are “basically healthy; everyone should get

involved,” although initiatives proposing tax increases “are much more difficult to pass,” says Steve Tirey at the Chamber of Commerce.

Gail Markham, of the Committee for a Cents-Able Plan, agrees. “Ballot measures—absolutely support them.” She is undaunted about the failure of her cause at the ballot box this year and says she will continue to try to convince voters that a sales tax increase is necessary. “It’s a good idea. It’s just that voters have to feel that way.” She also stresses that, where tax increases are involved, the groundwork must be skillfully laid by proponents. The board “did not carefully and specifically identify the projects the money would be used for,” she says, a viewpoint with which her opponent, citizen activist Brian Griffin, agrees.

“People have to know what they are voting for,” Griffin says. “A proposed sales tax increase in (nearby) Charlotte County was placed on the ballot and passed in 1994 because the county had a very specific purpose for the revenue. But here in Lee County, the Board did not properly identify what they needed the money for. Tax increases can pass here, and have passed here, if the voters know specifically how the extra monies will be expended.”

Even Griffin, however, who strongly backs ballot measures, believes they should not be overused. “We should not routinely legislate by ballot measure,” he says. “You can’t micromanage government in that way. But where citizens’ pocketbooks are involved particularly, ballot measures have a role.” Concerning the success of his campaign against the sales tax increase in Lee County, Griffin is philosophical. “We were the little guys in terms of money in this fight. But the little guys won,” he says.

That is certainly the view of county residents like Jim Wood. “We’re taxed like crazy here,” he says. “I think ballot measures are a great idea, especially if it’s about something that affects your pocketbook. I just wish more people would participate in something that directly affects them and not take democracy for granted.”

Issues of Democracy, IIP Electronic Journals, Vol. 5, No. 2, August 2000

Sales Tax Ballot Measure

“Shall Lee County Ordinance 99-21 be approved levying a countywide one cent per dollar sale surtax from January 1, 2000 to December 31, 2005 with no extension without further voter approval; proceeds being used by Lee County and Cities to construct and improve roads, youth recreation, juvenile justice, library, public safety, hurricane evacuation and preparedness facilities, with citizen advisory oversight committee for expenditures, as authorized by Section 212.055(2), Florida Statutes?

The Florida Sunshine Law

The tradition of openness in government in Florida began in 1909 with the passage of the Public Records Law, Chapter 119 of the state’s statutes. This law provides that any records made or received by a public agency in the course of its official business be open to the public for inspection, unless specifically exempted by name by the state legislature.

In 1967, the Florida Government-in-the-Sunshine law was enacted, Chapter 286 of the state’s statutes, one of many such laws around the country. The Sunshine law establishes a basic right of access to most governing bodies of state and local agencies. Initially, the legislature was not covered under the Sunshine law. But, in 1990, Florida voters overwhelmingly passed a state Constitutional amendment mandating open meetings in the legislative branch of state government. In 1992, another constitutional amendment was passed that extended it to the Judiciary.

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<http://www.alliance.napawash.org/alliance/index.html>

Links to projects, reinvention and national performance review information from the National Academy of Public Administration.

American Society for Public Administration

<http://www.aspanet.org/>

ASPA is a professional association with a membership of more than 10,000 practitioners, scholars, teachers and students involved in public administration.

Center for Public Integrity

<http://www.publicintegrity.org/main.html>

The Center for Public Integrity's mission is to provide the American public with the findings of its investigations and analyses of public service, government accountability and ethics-related issues via books, reports and newsletters.

Citizens Against Government Waste (CAGW)

<http://www.govt-waste.org/>

Citizens Against Government Waste is a private, nonpartisan, nonprofit organization dedicated to educating Americans about the waste, mismanagement, and inefficiency in the federal government.

Common Cause

<http://www.commoncause.org/>

Common Cause is a nonprofit, nonpartisan citizen's lobbying organization promoting open, honest and accountable government. Supported by the dues and contributions of over 250,000 members in every state across the nation, Common Cause represents the unified voice of the people against corruption in government and big money special interests.

Congressional Accountability Project

<http://www.essential.org/orgs/CAP/CAP.html>

A nonprofit, tax-exempt organization founded in 1982 by Ralph Nader, which provides information to the public on important topics neglected by the mass media and policy makers.

Florida Government Accountability Report

<http://www.oppaga.state.fl.us/government/>

The Florida Government Accountability Report describes what Florida's state government does and how effective it is in meeting the needs of Florida's citizens. Legislators and the public now have free, direct access to an Internet service that monitors the activities and performance of almost 400 state government agencies and programs.

Florida Tax Watch

<http://www.floridataxwatch.org/>

Florida TaxWatch is the only statewide organization entirely devoted to protecting and promoting the political and economic freedoms of Floridians as well as the economic prosperity of the state. Since its inception in 1979, Florida Tax Watch has become widely recognized as the watchdog of citizens' hard-earned tax dollars.

Government Accountability Project (GAP)

<http://www.whistleblower.org/>

The mission of GAP is to protect the public interest and promote government and corporate accountability by advancing occupational free speech, defending whistleblowers and empowering citizen activists.

Government Watchdog Links

<http://www.hillnews.com/resources/links/watchdog.html>

An extensive list of links to nongovernment organizations whose primary mission is to hold the U.S. government accountable.

GPR Report: News and Analysis of the Government Performance and Results Act (GPR)

<http://www.ombwatch.org/gpra/gpra1.html>

History, analysis and informative data and background information from the Office of Management and Budget (OMB).

The National Whistleblower Center

<http://www.whistleblowers.org/>

A nonprofit educational and advocacy organization committed to environmental protection, nuclear safety, civil rights, government accountability and protecting the rights of employee whistleblowers.

National Security Archive (George Washington University)

<http://www.hfni.gsehd.gwu.edu/~nsarchiv/>

The National Security Archive was founded in 1985 by a group of journalists and scholars who had obtained documentation from the U.S. government under the Freedom of Information Act and sought a centralized repository for these materials. Over the years, the Archive has become the world's largest nongovernmental library of declassified documents.

Open Secrets.org: The Online Source for Money in Politics Data

<http://www.opensecrets.org/home/index.asp>

Financial disclosure information from the Center for Responsive Politics. Also see the special focus on contributions to the 2000 national election at <http://www.opensecrets.org/2000elect/lookup/AllCands.htm>

Performance Report Scorecard: Which Federal Agencies Inform the Public?

<http://www.mercatus.org/scorecard/index.html>

Government Performance and Results Act (GPRA) reports, evaluated by George Mason University's Mercatus Center research team.

Project on Government Oversight (POGO)

<http://www.pogo.org/>

The Project On Government Oversight (POGO) is a nonpartisan nonprofit government watchdog, whose mission is to investigate, expose and remedy abuses of power, mismanagement and government subservience to special interests by the federal government.

Public Citizen

<http://www.citizen.org/>

Founded by Ralph Nader in 1971, Public Citizen is the consumer's eyes and ears in Washington, focusing on safer drugs and medical devices, cleaner and safer energy sources, a cleaner environment, fair trade and a more open and democratic government.

United States Department of Justice Office of Information and Privacy (OIP)

<http://www.usdoj.gov/oip>

The Office of Information and Privacy is the principal contact point within the executive branch for advice and policy guidance on matters pertaining to the administration of the Freedom of Information Act.

United States Department of Labor, Office of Administrative Law Judges Law Library: Whistleblower Collection

<http://www.oalj.dol.gov/libwhist.htm>

A searchable database of documents concerning government accountability.

United States Office of Government Ethics (OGE)

<http://www.usoge.gov/>

The OGE prevents and resolves conflicts of interest and fosters high ethical standards for federal employees, as well as strengthens the public's confidence that the government's business is conducted with impartiality and integrity.

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